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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/694,077	10/19/2000	Ilya Ravkin	VAI 301B	7890	
22918	7590 04/22/2005		EXAM	EXAMINER	
PERKINS COIE LLP			EPPERSO	EPPERSON, JON D	
P.O. BOX 210 MENLO PAR	68 RK, CA 94026		ART UNIT	PAPER NUMBER	
			1639	1639	
			DATE MAILED: 04/22/2005		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary		Application No.	Applicant(s)				
		09/694,077	RAVKIN ET AL.				
		Examiner	Art Unit				
		Jon D. Epperson	1639				
Period fo	The MAILING DATE of this communication app or Reply	ears on the cover sheet with the c	orrespondence address				
THE - Exter after - If the - If NO - Failu Any r	ORTENED STATUTORY PERIOD FOR REPLY MAILING DATE OF THIS COMMUNICATION. nsions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a reply period for reply is specified above, the maximum statutory period we re to reply within the set or extended period for reply will, by statute, eply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	i6(a). In no event, however, may a reply be tim within the statutory minimum of thirty (30) days ill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONEI	nely filed s will be considered timely. the mailing date of this communication. O (35 U.S.C. § 133).				
Status							
1)	Responsive to communication(s) filed on						
2a) <u></u> ☐	This action is FINAL . 2b) This action is non-final.						
3)□	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Dispositi	on of Claims						
4) 🖂	Claim(s) 34-47 is/are pending in the application	1					
	4a) Of the above claim(s) is/are withdrawn from consideration.						
	5) Claim(s) is/are allowed.						
6)	Claim(s) is/are rejected.						
	Claim(s) is/are objected to.						
8)⊠	Claim(s) <u>34-47</u> are subject to restriction and/or	election requirement.					
Applicati	on Papers						
9)□ .	The specification is objected to by the Examiner	·					
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11) 🗌 .	The oath or declaration is objected to by the Exa	aminer. Note the attached Office	Action or form PTO-152.				
Priority u	ınder 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 							
Attachment	(e)						
_	(s) e of References Cited (PTO-892)	4) Interview Summary (PTO-413)				
2) 🔲 Notice	e of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Dai	te				
	nation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) No(s)/Mail Date	5) Notice of Informal Pa	atent Application (PTO-152)	, 1			
				K			

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SUBSTITUTE RESTRICTION

1. Upon further review of Applicants' 10/26/04 Supplemental Response wherein New claims 34-47 were added, a substitute restriction and/or election of species was deemed necessary to correct for the previous restriction requirement that was mistakenly drawn toward 1, 3-6, 18, 20 and 31-33. Thus, all previous election and/or restrictions requirements are herby withdrawn in favor of the present action. Please note that Applicants must confirm the cancellation of claims 1-33 in response to this action.

Election/Restriction

2. Election from the following species is required. Note: applicant must elect *one* species from *each* subgroup below. Claim 34 is generic

Subgroup 1: Species of particle and/or carrier (see claim 34)

Applicant must elect, for the purposes of search, a <u>single species</u> of particle and/or carrier. Applicants must indicate whether said particle and/or carrier is a comprises a combination of fused fibers of various colors (e.g., see claim 37). Applicants must further indicate the shape of said viewing surface (e.g., claim 35; see also specification, page 10, lines 27-29 wherein circle, triangle, etc. are disclosed; see also claim 22). In addition, Applicant must indicate the materials used to make the particle and/or carrier (e.g., plastic, glass, etc.; see original claims 16 and 17). Finally, Applicants must indicate whether or not said particle and/or carrier contains a transparent and/or colored region (e.g., see claim 36). Thus, a proper election would include, for example, a flat square ribbon made of parallel glass fibers, each fiber has one of at least two different colors and does not contain a transparent region (e.g., see specification, page 28, lines 19-21).

Subgroup 2: Species of analyte (see claims 34)

Applicant must elect, for the purposes of search, a <u>single species</u> of analyte such as oligonucleotides, oligopeptides, etc. (e.g., see specification, page 8, line 3). Applicants must also indicate whether said analytes are covalently attached (e.g., see claim 39).

Subgroup 3: Species of imaging deivce (see claims 34)

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Applicant must elect, for the purposes of search, a <u>single species</u> of imaging device e.g., CCD camera.

- 3. <u>Please Note:</u> Applicants must disclose which claims read on the elected species (see paragraphs 6 and 7 below).
- 4. The species are distinct, each from the other, because their structures and modes of action are different. They would also differ in their reactivity and the starting materials from which they are made. For different species of method, the method steps for each species would differ. Moreover, the above species can be separately classified. Consequently, the species have different issues regarding patentability and represent patentably distinct subject matter. Therefore, this does create an undue search burden, and election for examination purposes as indicated is proper.
- 5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.
- 6. Applicant is advised that a reply to this requirement <u>must include an identification of the</u>

 <u>species that is elected consonant with this requirement</u>, <u>and a listing of all claims readable</u>

 <u>thereon</u>, <u>including any claims subsequently added</u>. An argument that a claim is allowable or

 that all claims are generic is considered <u>nonresponsive</u> unless accompanied by an election.

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7. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

- 8. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.
- 9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). Because the above restriction/election requirement is complex, a telephone call to applicants to request an oral election was not made. See MPEP § 812.01.
- Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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11. Applicant is also reminded that a 1 - month (not less than 30 days) shortened statutory period will be set for response when a written requirement is made without an action on the merits. This period may be extended under the provisions of 37 CFR 1.136(a). Such action will not be an "action on the merits" for purposes of the second action final program, see MPEP 809.02(a).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon D Epperson whose telephone number is (571) 272-0808. The examiner can normally be reached Monday-Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jon D. Epperson, Ph.D. April 19, 2005

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